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December 16, 2004

Dear *Insight* Subscribers:

As we approach the end of another busy year, I first want to thank you for the work that you do to further our mutual goal to protect the health, safety and welfare of Iowa's frail, elderly and less advantaged. Second, I want to take this opportunity, on behalf of the Department of Inspections and Appeals (Department), to supplement the information we share with you throughout the year in such venues as our *Insight* publication, combined training sessions, and presentations at various conferences around the state. There are several Department initiatives you are likely already familiar with, but a little more detail will always be helpful. We are continually striving to improve our performance and enhance communications.

The topics to be covered include: **the Department's new Web-Accessible Data System; the Informal Dispute Resolution Process (IDR)/Informal Conference on Contested Citation; the Abuse Coordinating Unit; the State Special Focus Facility (SSFF) Program; the Direct Reporting Requirements of H.F. 2390; and Year End Reflection: Regulatory "Mis"perception.** For those of you who are members of a provider association, some of this information may have already been conveyed to you after the Department met with your representatives a short time ago. For others, some of this information has been communicated by the Department through its Web site or by other means. Some information is new. Please feel free to contact us if you have any questions.

Web-Accessible Data System

About a year ago, the Department engaged in a detailed examination of its existing databases, their internal functionality and connectivity to the public via the Web. The old databases consisted of a group of seven (7) databases that were developed over a very long period of time and "patched together" in a rather crude fashion. These databases got the job done most of the time, but there were issues with time delays to access public information and multiple data entry opportunities for error. We faced the decision whether to keep the old "IBM Selectric" technology that had served us well, or move into the future – the present – for data collection, dissemination and reporting. We knew all along that developing a new system would present significant challenges, but decided to take them on. As most of you know from working with the new system of late, our task is not complete. We expect to finish the majority of this undertaking in the next few months. We will be able to address the "user friendliness" and "look and feel" issues as soon as functionality is complete. Our contractor, the State's Information Technology Enterprise, has been working nearly around the clock to address remaining issues. We have also been working with Iowa Interactive to meet our obligation to make the Department's Web site compliant with Section 508 of the Federal Rehabilitation Act.

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Support for the development of this application came from the Robert Wood Johnson Foundation and the Atlantic Philanthropies through their support of the Iowa Care Givers Association, the Better Jobs/Better Care Grant, and the Iowa Department of Public Health Center for Health Workforce Planning. Long term cost savings are anticipated as we centralize this system into the state structure, instead of working with multiple private contractors (some out of state).

Some of the extraordinary features of the new system will include:

Real Time Web Information. Users of the Web-Accessible Data System will have access to information more quickly than in the past and will be able to interact with the system in keeping important demographic data up to date.

Direct Care Worker Tracking. Entities submit Direct Care Worker (DCW) employment information, (including Certified Nursing Assistants (CNAs)) insuring the information in the registry remains current. Entities can access information on employment-eligible DCWs/CNAs via the Internet. DCWs/CNAs can use the Internet to change basic demographic information (not employment or tests). CNA test scores will be directly loaded into the system by Community College training sites. The registry can accommodate CNAs and other DCWs.

Entities Book. The Entities Book enables external users and stakeholders to create a dynamic entity directory, distinguishing between license types.

Entity and Abuse Complaints. Department staff can manage a complaint through its entire life cycle. The database will be compatible with Aspen Complaint Tracking (ACT).

Online Licensure Renewal. The system automatically notifies an entity's administrator via e-mail when license renewal is due. Entity administrators can pay for a new license using electronic payment, and print the license directly.

Best Practices Tracking. Entities are recognized for "Best Practices" in nine categories. Details about each practice are identified and information about the entity is recorded for follow-up. Nominations of entities can be made via the Web site.

Entity Tracking and Management. Bureau Chiefs and Program Coordinators receive email "pop up" notifications to track survey frequency and due dates.

Entity Search. The system can find entities by name, county, city, and type. Detailed entity information, including best practices and contact information, is provided. The public can review an entity's survey/monitoring history, including statements of deficiencies/monitoring reports.

Entity Report Cards. The public can review actual survey and complaint experiences. The Report Card summarizes deficiencies, including scope and severity.

We look forward to fine tuning the new system, and appreciate your comments, patience, understanding, and suggestions to date.

Informal Dispute Resolution Process/Informal Conference on Contested Citation

Many of you will recall the period of time that grant funding permitted the Department to retain a group of external reviewers for the purpose of performing Informal Dispute Resolution (IDR) and Informal Conference activities. You will also recall that unsuccessful efforts were made to obtain funding to continue this practice. When funding was no longer an option, the Department worked to establish an alternative protocol to meet both federal and state requirements (they are different). The requirements for the federal IDR process are generally found at 42 CFR section 488.331, as well as in the State Operations Manual (SOM-7212C). Iowa Code section 135C.42 and 481 IAC section 56.14 prescribe the state Informal Conference on Contested Citation process. The manner in which the process operates now is very similar to the Department's practice prior to use of the external review group.

The federal and state requirements are very detailed in nature, and it would be impractical to repeat them here. Suffice to say that on the federal side, the facility is to be offered an "informal opportunity ... to dispute survey findings." On the state side, the Department must assign a representative (other than the inspector whose citation is being challenged) to hold an informal conference and "affirm or modify or dismiss" the citation for Class II or Class III violations. Class I violations are not subject to informal conference statutory requirements. See Iowa Code §§ 135C.41(2) and 135C.42. Nor is a distinction made at either the federal or state level between what have become known as "desk reviews" and "face-to-face" proceedings (the SOM simply states that the facility must be notified of "how informal dispute resolution may be accomplished in that State, e.g. by telephone, in writing, or in a face-to-face meeting"). This means that the Department could offer only a single IDR option, such as telephone only. Despite this fact, we have chosen to provide two, and to broaden the available opportunities for review. The practice of desk reviews and face-to-face proceedings has developed over time, and we intend to maintain these proceedings, with minor modifications.

One modification is workload and resource driven. To date, several of the Department's independent Administrative Law Judges (ALJ) in the Administrative Hearings Division have conducted the face-to-face proceedings. In the near future, the Chief Administrative Law Judge will conduct all of these proceedings. This Division has seen a dramatic increase in contested case hearings and the ALJs who had been diverted to cover face-to-face proceedings need to get back to their primary job responsibilities.

A second modification relates to the notation above that Class I violations are not subject to informal conference statutory requirements. This modification is based upon the need to conform practice to statutory authority. Because state law limits the Informal Conference on Contested Citation to those cases involving a Class II or Class III citation, informal conferences will no longer be available to contest non Class II or Class III findings (i.e. Class I findings and those findings contained in a State Statement of Deficiencies). To clarify and reiterate, this means that a facility with a State Statement of Deficiencies and Class I citations may no longer contest these findings in the Informal Conference forum.

The following examples illustrate this change in policy:

- A residential care facility that has been issued a State Statement of Deficiencies is not entitled to an Informal Conference.
- A licensed and certified facility with both a Federal and State Statement of Deficiencies may contest the Federal Statement of Deficiencies in the IDR process, but cannot contest the State Statement of Deficiencies in this forum.

Another modification relates to the presentation of facility documents at either desk review or face-to-face proceedings. Unless justification is provided as to why the documents were not presented to the survey team, these documents (call them “after-acquired”) will not be considered when disputing findings or contesting citations, except for extraordinary circumstances. As noted next, if the documents are requested, but not provided, there is no reason they should be offered after the fact.

Last week, the Division’s entire survey staff was in Des Moines for training. I emphasized my desire that they consistently conduct “mini-exits” during the course of a survey (normally the second or third day into the survey, once the facts become clearer). Further, during the mini-exits, and at the formal exit, Division staff will invite the facility to produce all documents that might refute tentative findings. This is the time when these documents should be produced, not later at the desk review or face-to-face proceeding. Having the relevant documentation presented early on will minimize the possibility of the Division unnecessarily pursuing an issue. At desk review, we will expect to receive a cover letter explaining and detailing the relevance of the documentation as it relates to the findings being challenged, and an explanation of why it was not produced at the survey. As a side note, desk reviews are conducted by Bureau Chiefs other than the Bureau from where the challenge comes. These preliminary reviews will be presented to the independent Chief ALJ as a proposed decision. The Chief ALJ makes the final determination. This process is consistent with the protocols utilized in contested case hearing proposed decisions by ALJs to the Director under Iowa Code chapter 17A.

There have been rumors alleging that ever since the old external review system was discontinued, disputes of survey findings are hardly ever successful, and modifications or dismissals of citations are rare. At my request, the actual statistics concerning these allegations were reviewed. The statistics show that the rates of “reversal” and “modification or dismissal” are nearly identical under the current review system. Both systems appear to contain the same safeguards and reliability, producing nearly identical statistical results. The review process used by the Department should dispel any rumors that something has happened to undermine the ultimate fairness or results of the process.

I need to emphasize in this discussion of the IDR process that the federal requirements are very clear that the Department is always and ultimately accountable for the legitimacy of the process “and reliability of conclusions that are drawn with respect to survey findings.” (SOM-Note at 7212(C)(3)). Stated another way: If, during our review of any action taken during this process, the facts suggest non-compliance with statutory and regulatory standards, the Department must take action to ensure compliance. For example: If, during desk review or in a face-to-face proceeding, a determination is about to be issued that is contrary to known standards, supervisory management must take affirmative action to ensure correction. The Department’s current “Informal Dispute Resolution Process” Form (02/24/03) will be modified to comport with the changes discussed above. The Form will also be modified to account for other minor procedural changes, which will take effect upon publication of the Form.

Abuse Coordinating Unit

On December 7, 2004, the *Des Moines Register* published an article discussing the Department’s new Abuse Coordinating Unit (“State to scrutinize care home officials”/“State to crack down on nursing home abuse”). It was correctly indicated in that article that the Department’s objective is to provide a more focused and consistent approach to abuse issues, and that our goal is not to “punish” but, rather, to improve responsiveness to complaints. This is the true focus of the new Unit, along with consistency in actions and coordinated referrals. The new Unit was discussed during the Governor’s Aging Services Cabinet meeting last month. Provider organizations were present, among other interested entities.

There are several reasons for creation of this new Unit. An increase in the number of complaints, an effort to emphasize consistency in the way complaints are investigated and “founded”, an effort to emphasize timeliness in responsiveness and action, and coordination among responsible entities are a few of the reasons for the Unit’s creation. In an effort to address these issues, the Department has supplemented its field survey staff with five (5) dedicated complaint field surveyor staff located in our five geographic regions, with five (5) rotating back-up staff as well. A new Administrator has been hired to oversee all aspects of abuse complaints, including administrative actions and criminal referrals. A single Abuse Program Coordinator will oversee all abuse intakes, in concert with the Administrator and dedicated complaint field surveyor staff. Investigator positions are being added in the Medicaid Fraud Control Unit (MFCU), and coordination among responsible departmental functions is being enhanced.

Attorney Ann Marie Brick, previously the Iowa Attorney General’s Division Director representing DHS, is the Administrator of this first-of-its-kind Unit. This position will serve as a resource for training, education, and coordination throughout the State. Ann Marie will undertake: quality oversight of MFCU criminal referrals, education and coordination with County Attorneys, training and education of complaint handlers and surveyors, outreach and education to the provider community, legislative initiatives, rulemaking initiatives, contested case processing, referrals to professional licensing boards, etc.

We are proud of this new initiative.

The State Special Focus Facility (SSFF) Program

Unfortunately, the *Des Moines Register* characterized this year old effort by the Department as a “worst list” of nursing homes in Iowa (*Des Moines Register*, October 23, 2004, “18 nursing homes on ‘worst’ list”). I challenged this characterization and the writer agreed that this was the newspaper’s characterization, not the Department’s.

The SSFF Program is actually a selection of facilities assembled by the Department to focus on state quality initiatives. We believe this new program is a first of its kind nationally because of its state, rather than federal perspective. Its design is to serve to assist facilities with improvement through special focus by the Division’s Administrator, Bureau Chiefs, and Program Coordinators. The criteria for inclusion in the SSFF Program are somewhat fluid, but do not necessarily reflect, as the newspaper alleged, “worst” performance. Generally, if a facility exceeds two (2) or more of the established criteria, and they are within the quota for the Program Coordinator’s area, they may be included as a part of the program. Criteria include: number of federal deficiencies over nine (9) in a prescribed twelve (12) month period; number of complaints over four (4) received in a prescribed twelve (12) month period; number of on-site visits over six (6) in a prescribed twelve (12) month period; amount of fines, citations, and civil money penalties assessed over \$1,000 in a prescribed twelve (12) month period; and/or significant increases in the number of deficiencies or other negative trends in a prescribed twelve (12) month period.

We are currently examining whether some or all of the facilities participating in this program should elect to do so voluntarily, in partnership with the Department. This program will continue with or without voluntary participation, but my preference would be “voluntary” partnership. Some of the positive aspects of such voluntary participation include increased consultation with Division staff and focused effort by the Division Administrator, Bureau Chief, and Program Coordinator. Voluntary participation is akin to quality initiatives recently taken by the provider community and the Iowa

Foundation for Medical Care (IFMC), under a CMS pilot project. Two facilities in the SSFF Program were referred by the Department to our State's Quality Improvement Organization, IFMC. These facilities volunteered to participate. Early reports suggest coordination, cooperation, and significant improvement. We expect and hope that we will be able to make additional referrals of facilities seeking to improve services for their residents. In the near future, we will be discussing with stakeholders whether there is interest in voluntary participation within the SSFF Program. I am of the opinion that working together in partnership should change the unfair focus that mischaracterized the Department's true intent for this quality initiative.

We have high expectations for this initiative.

The Direct Reporting Requirements of H.F. 2390

As you know, H.F. 2390 amended the reporting requirements of Iowa Code § 235B.3(a)(2003). Effective July 1, 2004, the law changed the responsibilities of mandatory reporters who work in facilities, agencies and programs so that if they suspect abuse of a dependent adult, they must report immediately to the appropriate department, as well as notify the person in charge. It has come to our attention that there has been some confusion about when this requirement will be monitored by DIA. Because it is the law, DIA is mandated to identify noncompliance if employees do not report as appropriate. PLEASE TAKE NOTICE OF THIS REQUIREMENT. Additional information about this requirement can be found on the Department of Human Services' Web site at www.dhs.state.ia.us in the DHS Employee's Manual, Title 16, Chapter G, p. 12a, and General Letter No. 16-G-16 (August 3, 2004) (found at the end of the manual).

It is my understanding that concern exists over the "immediate" reporting requirements. This concern was only recently brought to my attention, and I understand that DHS is reviewing this issue for possible administrative rule clarification.

Year End Reflection: Regulatory "Mis"perception

This time of the year provides us all with an opportunity to reflect upon what we have accomplished throughout the past twelve (12) months, balanced against a solemn promise of personal growth to which we committed at the year's beginning. I have taken this opportunity to reflect on a personal commitment I made for continued growth of the Department. I am pleased with the ongoing deep commitment our staff has demonstrated toward making the survey process professional, respectful, and fully committed to "integrity first" in all we do.

It is on rare occasion that I am approached with a complaint/comment about the relevance of a regulatory mandate. We all know that regulatory oversight exists to ensure that the frail, elderly, and less advantaged are protected in a safe environment. The issue that draws attention from time to time relates to how the Department actually conducts its regulatory oversight. This brings me back to reflecting on my year's personal commitment.

It is not uncommon for the Department to receive notes of praise from those we regulate. It is my pleasure and practice to pass those on to staff with a congratulatory note. Should we rest on these accolades? Simply stated, the answer is "no." Quality mindedness is always at the forefront in our thinking.

The term “punitive” is sometimes suggested in this context. I attribute this suggestion to lingering “mis”perceptions as to how we do our business. Regulation, at its essence, is to investigate, identify, and report noncompliance. Regulation is not based in consultation. In fact, that would be contrary to our federal mandate. When field survey staff fail to engage in consultation during onsite visits, some, less knowledgeable of the regulatory process, may consider it rude behavior. Rude then has the potential to morph into the Department being “punitive.” Punitive, in turn, can evolve into a claim that we do not care about quality. I understand how these perceptions might develop, but they are far from the reality of how we actually conduct Department business. The Department remains committed to high standards of staff professionalism.

The State Special Focus Facility Program and Abuse Coordinating Unit initiatives are unmistakable quality initiatives. I expect to see consultation with our partner focus facilities. Direct and recurring access to central office supervisory staff will greatly benefit the quality initiatives the program was, over a year ago, designed to address. We are pleased that two of our state special focus facilities volunteered to partner with CMS in its pilot quality initiative. As previously indicated, that partnership appears to be paying dividends. The Abuse Coordinating Unit will, likewise, ensure quality and consistency relative to investigations of dependent adult abuse. Progress was made on my personal commitment, but we will not rest on our laurels. More progress can always be made.

In conclusion, we have done our best to ensure the widest dissemination of this letter to all interested parties. In addition to this letter being mailed to associations (and we request re-dissemination by these associations), it is being sent via e-mail to over 900 contacts that currently receive our *Insight* publication. The Department's Web site will also have, in the very near future, a "Hot Notices" link where this letter and other Department-wide items of interest will be posted. Keep an eye out for that new feature. Thank you for your continuing effort to be quality minded. Our partnership – Regulator/Provider/Advocate – can be challenging at times. Nonetheless, we must not lose sight of our shared passion to serve Iowans.

Happy Holidays,

A handwritten signature in black ink that reads "Steve Young". The signature is written in a cursive, flowing style.

STEVEN K. YOUNG
Director

cc: Director Kevin Concannon (Department of Human Services)
Director Mark Haverland (Department of Elder Affairs)
Director Mary Mincer-Hansen (Department of Public Health)
Josh Mandelbaum (Governor's Policy Liaison)